



In Reply Refer To: **18-11320-F**

February 14, 2019

Sent via email address: 5917-39790871@requests.muckrock.com

CJ Ciaramella
MuckRock News
DEPT MR 59217
411A Highland Avenue Ave.
Somerville, MA 02144-2516

Dear Ciaramella:

This letter is in further reference to your Freedom of Information Act/Privacy Act request dated and received by this office on August 8, 2018 requesting:

"Copies of any & all communications containing "propublica" "Arnsdorf" "perlmutter" "moskowitz" "sherman" or mar-a-lago between August 1, 2018 and August 8, 2018, to or from the following officials VA Secretary Robert Wilkie; General Counsel James Byrne, Secretary OPIA John Ulyott and press Secretary Curt Cashour.
-And all records to or from the above-mentioned officials that include the email domain "who.eop.gov" between Aug. 1, 2018 and Aug. 8, 2018

We apologize for our delay—requests for OGC's assistance have increased dramatically, and we are doing our best to keep up with the demand for our services.

Your request was assigned FOIA Tracking Number 18-11320-F. Please refer to this number in any future correspondence.

The Freedom of Information Act, 5 U.S.C. § 552(A)(a)(ii), places all FOIA requesters in one of three categories for fee purposes. The three categories of FOIA requesters are commercial use; educational institutions, noncommercial scientific institutions, representatives of the news media; and all other requesters.

We have classified you as a representative of the news media. As such, we may charge you for some of our duplication costs, but we will not charge you for our search or review costs; you also are entitled to up to 100 pages of photocopies (or an equivalent volume) for free. See 38 C.F.R. § 1.561(b)(7). If, after taking into consideration your fee category entitlements, our processing costs are less than \$50.00, we will not bill you because the cost of collection would be greater than the fee collected. See 38 C.F.R. § 1.561(b)(7).

A comprehensive search for the documents you seek has concluded which resulted in four (4) pages of responsive records being located. Upon review of the four pages of responsive records, I have determined these pages may contain portions which are exempt from disclosure pursuant to FOIA Exemption 6.

Enclosed are four pages of record material which is being partially provided to you. Certain deletions have been made to this material pursuant to (title 5, United States Code U.S.C. 552 (b)(6)). Exemption 6, protects information about other individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

Exemption 6 protects information about other individuals if the release would lead to a clearly unwarranted invasion of personal privacy. 5 U.S.C. §552(b)(6). As noted in United States Department of Justice v. Reporter's Committee for Freedom of the Press, 489 U.S. § 749 (1989), the Supreme Court provided the following step-by-step analysis to determine when the exemption applies to a case: (1) determine whether a personal privacy interest is involved; (2) determine whether disclosure would serve the public interest; and, (3) balance the personal privacy interest against the public interest. Substantial privacy interests exist in the names and email addresses, and other personal identifying information since career public servants retain personal privacy interests in the discharge of their public duties. New England Apple Council, Inc. v. Donovan, 725 F.2D 139 (1st Cir. 1984).

While the release of the aforementioned information may be permissible if it would serve an articulable and significant public interest, you have not identified a public interest in the identities of these individuals that would outweigh their privacy interest. Overall, the balance weighs in favor of protecting the privacy of other individuals involved, and we find that their identities and identifying details are protected under Exemption 6.

The above-mentioned record material constitutes all records in the custody of this office which relate to the subject of your request.

VA FOIA Appeal, Public Liaison, OGIS Options

Should you have any questions, comments, or concerns regarding the processing of this request, you may contact M. Renee Baxter at OGCFOIArequests@va.gov. Also, you have the right to seek assistance from the VA FOIA Public Liaison, Doloras Johnson, at 1(877) 750-3642 or by email at vacofoiaservice@va.gov.

You may appeal the initial determination made in this response to:

***Department of Veterans Affairs
Office of General Counsel (OGC) (Appeals)
810 Vermont Avenue, N.W. (024)
Washington, DC 20420-0001***

Please include your FOIA case number in any appeal. Also, include a copy of this letter with your written appeal and clearly state why you disagree with the determinations set forth in this response. You must file your appeal within 90 days from the date of this letter clearly marking both the letter and the envelope "**Freedom of Information Act Appeal**." Please include a copy of this letter with your appeal, and state why you disagree with this determination.

Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA

requesters and Federal agencies. You may contact OGIS by email at ogis@nara.gov; by toll-free telephone at 1-877-684-6448 (or 202-741-5770); by facsimile at 202-741-5769; or by writing to: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001.

Sincerely,



M. Renée Baxter
OGC FOIA Officer

Baxter, M. Renee (OGC)

From: Hipolit, Richard (OGC)
Sent: Wednesday, August 08, 2018 7:13 PM
To: Mitrano, Catherine (SES) (OGC); Byrne, Jim (OGC); [REDACTED] (OGC); OGC ELT
Subject: RE: Aug 7, 2018 - ProPublica article "The Shadow Rulers of the VA" - FACA

I'm not aware of any OGC consultation.

Sent with Good (www.good.com)

From: Mitrano, Catherine (SES) (OGC)
Sent: Wednesday, August 08, 2018 2:55:32 PM
To: Byrne, Jim (OGC); [REDACTED] (OGC); OGC ELT
Subject: RE: Aug 7, 2018 - ProPublica article "The Shadow Rulers of the VA" - FACA

Jim,

To the best of my knowledge we in OGC were not asked to opine on any VA engagement with the three men mentioned in the ProPublica article and therefore we are not aware of any additional facts that could implicate FACA.

If anyone else copied here was consulted, please feel free to weigh in, but I did a quick scan of GCLaws and didn't see anything.

*Catherine C. Mitrano
Principal Deputy General Counsel
and Designated Agency Ethics Official
Department of Veterans Affairs
810 Vermont Ave, Ste 1030
Washington, DC 20420
202-461-7661*

From: Byrne, Jim (OGC)
Sent: Wednesday, August 08, 2018 4:08 PM
To: [REDACTED] (OGC); [REDACTED] (b)(6) OGC ELT <OGCELT@va.gov>
Subject: Aug 7, 2018 - ProPublica article "The Shadow Rulers of the VA" - FACA

[REDACTED] (b)(6) and OGC Leadership Team,
A Federal Advisory Committee Act (FACA) subject matter expert has evaluated the alleged advisory activities of the three gentlemen in Mar-a-Lago, Florida discussed in the above referenced article The Shadow Rulers of the VA — ProPublica.

He opined that the alleged advisory activities presented in the article were not sufficiently formal to trigger a FACA concern. Are any of you aware of any additional facts that may trigger a FACA concern for VA?

Thank you,
Jim

James M. Byrne
General Counsel
U.S. Department of Veterans Affairs
(202) 461-4995

He opined that the alleged advisory activities presented in the article were not sufficiently formal to trigger a FACA concern. Are any of you aware of any additional facts that may trigger a FACA concern for VA?

Thank you,
Jim

James M. Byrne
General Counsel
U.S. Department of Veterans Affairs
(202) 461-4995

Baxter, M. Renee (OGC)

From: Mitrano, Catherine (SES) (OGC)
Sent: Wednesday, August 08, 2018 5:56 PM
To: Byrne, Jim (OGC); [REDACTED] (b)(6) (OGC); OGC ELT
Subject: RE: Aug 7, 2018 - ProPublica article "The Shadow Rulers of the VA" - FACA

Jim,

To the best of my knowledge we in OGC were not asked to opine on any VA engagement with the three men mentioned in the ProPublica article and therefore we are not aware of any additional facts that could implicate FACA.

If anyone else copied here was consulted, please feel free to weigh in, but I did a quick scan of GCLaws and didn't see anything.

*Catherine C. Mitrano
Principal Deputy General Counsel
and Designated Agency Ethics Official
Department of Veterans Affairs
810 Vermont Ave, Ste 1030
Washington, DC 20420
202-461-7661*

From: Byrne, Jim (OGC)
Sent: Wednesday, August 08, 2018 4:08 PM
To: [REDACTED] (b)(6) (OGC) [REDACTED] (b)(6) OGC ELT <OGCELT@va.gov>
Subject: Aug 7, 2018 - ProPublica article "The Shadow Rulers of the VA" - FACA

[REDACTED] (b)(6) and OGC Leadership Team,
A Federal Advisory Committee Act (FACA) subject matter expert has evaluated the alleged advisory activities of the three gentlemen in Mar-a-Lago, Florida discussed in the above referenced article The Shadow Rulers of the VA — ProPublica. He opined that the alleged advisory activities presented in the article were not sufficiently formal to trigger a FACA concern. Are any of you aware of any additional facts that may trigger a FACA concern for VA?

Thank you,
Jim

James M. Byrne
General Counsel
U.S. Department of Veterans Affairs
(202) 461-4995

Baxter, M. Renee (OGC)

From: Byrne, Jim (OGC)
Sent: Wednesday, August 08, 2018 4:08 PM
To: (b)(6) (OGC); OGC ELT
Subject: Aug 7, 2018 - ProPublica article "The Shadow Rulers of the VA" - FACA

(b)(6) and OGC Leadership Team,
A Federal Advisory Committee Act (FACA) subject matter expert has evaluated the alleged advisory activities of the three gentlemen in Mar-a-Lago, Florida discussed in the above referenced article The Shadow Rulers of the VA — ProPublica. He opined that the alleged advisory activities presented in the article were not sufficiently formal to trigger a FACA concern. Are any of you aware of any additional facts that may trigger a FACA concern for VA?

Thank you,
Jim

James M. Byrne
General Counsel
U.S. Department of Veterans Affairs
(202) 461-4995